

EXHIBIT A

FILED
01-31-2020
CIRCUIT COURT
DANE COUNTY, WI
2020CV000304
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

MICHAEL S. POLSKY, ESQ., WIS. STATS.
CHAPTER 128 RECEIVER OF SCHOEP'S ICE
CREAM CO., INC.,
330 East Kilbourn Avenue, Suite 1085
Milwaukee, WI 53202,

Case No.
Case Code: 30301
Classification: Money Judgment

Plaintiff,

v.

HIGH ROAD CRAFT ICE CREAM, INC.
1730 West Oak Commons Court
Marietta, GA 30062,

Defendant.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Courthouse, 215 S Hamilton Street, Madison, WI 53703, and to Plaintiff's attorney, Steven W. Jelenchick, whose address is Beck, Chaet, Bamberger &

Polsky, S.C., 330 East Kilbourn Avenue, Suite 1085, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 31st day of January, 2020.

BECK, CHAET, BAMBERGER & POLSKY, S.C.
Attorneys for Plaintiff

By: Electronically signed by Atty. Steven W. Jelenchick
Steven W. Jelenchick
State Bar No. 1037766

P. O. Address:

BECK, CHAET, BAMBERGER & POLSKY, S.C.
330 East Kilbourn Avenue, Suite 1085
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1730 West Oak Commons Court
Marietta, GA 30062,

Defendant.

COMPLAINT

NOW COMES the Plaintiff, Michael S. Polsky, Esq., Wis. Stats. Chapter 128 Receiver of Schoep's Ice Cream Co., Inc., by and through his attorneys, Beck, Chaet, Bamberger & Polsky, S.C., and as and for a cause of action against Defendant, High Road Craft Ice Cream, Inc., alleges and shows to the Court as follows:

PARTIES AND JURISDICTION

1. On October 15, 2019, the Honorable Frank D. Remington, Circuit Court Judge, Dane County, entered an Order in Case No. 19-CV-2847 appointing Michael S. Polsky, Esq. as the Receiver (the **"Receiver"**) of Schoep's Ice Cream Co., Inc. (**"Schoep's"**), under Chapter 128 of the Wisconsin Statutes.

2. Upon information and belief, Defendant, High Road Craft Ice Cream, Inc. (hereinafter **"Defendant"**) is a foreign corporation, organized and existing under the

laws of Georgia, with its principal place of business located at 1730 W. Oak Commons Court, Marietta, Georgia, 30062.

3. Upon information and belief, the registered agent for service of process on Defendant is Michael P. Williams, whose registered address for service is 3414 Peachtree Road NE, Suite 1600, Atlanta, Georgia, 30326.

4. This Court has personal jurisdiction over the Defendant pursuant to §§ 801.05(1), 801.05(5)(a) and 801.05(5)(d) of the Wisconsin Statutes.

FACTS

5. On or about February 21, 2019, Schoep's, as Manufacturer, entered into a Manufacturing Agreement with Defendant, as Purchaser, wherein Schoep's agreed to manufacture, and Defendant agreed to purchase, certain items and flavors of ice cream and related frozen confectionary products (the "**Confectionary Products**").

6. Under the Agreement, Defendant would provide forecasts to Schoep's detailing its requested production requirements for the Confectionary Products on an annual and a rolling 13 week basis. Based on these forecasts, Schoep's was required under the Agreement to schedule production runs and have necessary ingredient inventories on hand sufficient to satisfy Defendant's forecasts ("**Ingredient Inventory**").

7. Under the Agreement, after the forecasts were made: (i) Defendant would submit purchase orders to Schoep's which would detail the quantity and variety of the Confectionary Products desired (the "**Purchase Orders**"); (ii) Schoep's would manufacture the Confectionary Products pursuant to the Purchase Orders; (iii) Defendant would issue a shipping order to Schoep's designating the Confectionary Products to be shipped, the destination, and the date of shipment ("**Shipping**").

Orders"); and (iv) and Schoep's would invoice Defendant for the Confectionary Products manufactured by Schoep's pursuant to the Purchase Orders and shipped by Schoep's pursuant to the Shipping Orders, payment being due by Defendant pursuant to "Net 30 day" terms ("**Invoices**").

8. The total price of the Confectionary Products as set forth on the Invoices was to be determined pursuant to a formula as set forth in the Agreement, which total price was F.O.B. Schoep's plant, meaning that title passed to Defendant once the Confectionary Products left Schoep's shipping dock.

9. Over the course of the Agreement and pursuant to its terms, Schoep's has invoiced Defendant for the Confectionary Products manufactured by Schoep's and shipped to Defendant (attached and incorporated herein as **Exhibit A** is a true and correct copy of Schoep's Customer Statement regarding Defendant's account ("**Statement of Account**").

10. Pursuant to the Statement of Account, the current balance due and owing from Defendant to Schoep's is \$2,656,939.01, inclusive of all credits and debits.

11. The Receiver, on behalf of Schoep's, has made demand for payment of the balance due according to Schoep's books and records and Defendant has refused or otherwise neglected to make payment to the Receiver.

12. In addition to the amounts due and owing in Paragraph 10 above, the Agreement provides that Schoep's is also due an amount of 1.5% of any delinquent amounts calculated on a monthly basis. Accordingly, Schoep's is also entitled to an additional \$18,520.28.

13. The Agreement also provides that Defendant agrees to purchase all excess Confectionary Products and Ingredient Inventory from Schoep's. The current amount

of excess Confectionary Products and Ingredient Inventory in the hands of the Receiver is \$553,682.19.

14. The total amount due and owing from Defendant to the Receiver for the Confectionary Products Schoep's manufactured and shipped to Defendant under the Agreement is \$2,675,459.29.

15. Additional amounts are due and owing from Defendant to Schoep's for the excess Confectionary Products inventory, Ingredient Inventory and related packaging in the amount of \$553,682.19.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

16. The Receiver repeats and realleges paragraphs 1 through 15 of his Complaint as if fully set forth herein.

17. Schoep's and Defendant are parties to the Agreement whereby Defendant agreed to compensate Schoep's for certain Confectionary Products and services provided or performed by Schoep's, along with certain excess Confectionary Product inventory and Ingredient Inventory.

18. Schoep's has performed all of its obligations under the Agreement.

19. Defendant has failed to perform its obligations under the Agreement by refusing or otherwise neglecting to make full payment to the Receiver.

20. Defendant is in breach of the Agreement.

SECOND CAUSE OF ACTION – ACCOUNT STATED

21. The Receiver repeats and realleges paragraphs 1 through 20 of his Complaint as if fully set forth herein.

22. Upon information and belief, subsequent to Schoep's performance, a full, just and true account was made and stated which was delivered to and accepted by Defendant, and retained by it without objection being made thereto for any item thereof.

23. Upon information and belief, said account was restated on frequent occasions by delivery and acceptance of statements to Defendant and retained by it without objection.

24. As a result of the foregoing, an account stated exists between the Receiver and Defendant.

THIRD CAUSE OF ACTION – UNJUST ENRICHMENT

25. The Receiver repeats and realleges paragraphs 1 – 24 of his Complaint as if fully set forth herein.

26. Upon information and belief, Defendant accepted the Confectionary Products and services provided or performed by Schoep's and Defendant benefitted from the same and has been enriched thereby.

27. It is unjust to allow Defendant to retain the Confectionary Products and/or services provided to it by the Schoep's without the Receiver being fully compensated therefore.

WHEREFORE, the Plaintiff demands judgment against Defendant, High Road Craft Ice Cream, Inc., in the amount of \$3,229,141.48, plus 1.5% per month based on

total delinquency, and pre-judgment interest of 5% per annum, costs, disbursements, attorneys' fees and any other such relief as the court deems just and equitable.

Dated this 31st day of January, 2020.

BECK, CHAET, BAMBERGER & POLSKY, S.C.
Attorneys for Plaintiff

By: Electronically signed by Atty. Steven W. Jelenchick
Steven W. Jelenchick
State Bar No. 1037766

P. O. Address:

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Email: sjelenchick@bcblaw.net

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Correspondence To:

Schoep's Ice Cream Co., Inc.
P.O. BOX 3249
2070 Helena Street
Madison, WI 53704-3249
Phone: 608-245-4126



CUSTOMER STATEMENT

Statement Date: 01/29/20
Account Number: [REDACTED]
High Road Craft Ice Cream
Payment Terms NET 30 DAY

High Road Craft Ice Cream
1730 West Oak Commons Ct
Marietta, GA 30062

Amount Remitted

RETURN THIS PORTION OF
STATEMENT WITH YOUR PAYMENT.

Document	Date	Terms	Code	Debits	Credits	Balance
209868	07/02/19	Order 477712A	Invoice	7,170.59		7,170.59
209869	07/02/19	Order 477713S	Invoice	34,151.04		41,321.63
209931	07/03/19	Order 477725	Invoice	40,705.28		82,026.91
209932	07/03/19	Order 477724A	Invoice	44,405.76		126,432.67
209941	07/04/19	Order 477735A	Invoice	49,514.50		175,947.17
209942	07/04/19	Order 477736A	Invoice	50,568.00		226,515.17
209945	07/08/19	Order 477742A	Invoice	44,217.60		270,732.77
209946	07/08/19	Order 477743A	Invoice	17,502.80		288,235.57
209981	07/09/19	Order 477762A	Invoice	49,674.24		337,909.81
209982	07/09/19	Order 477763A	Invoice	49,674.24		387,584.05
210012	07/10/19	Order 477768A	Invoice	46,757.76		434,341.81
210013	07/10/19	Order 477769A	Invoice	46,757.76		481,099.57
210040	07/11/19	Order 477781/770A	Invoice	43,343.44		524,443.01
210041	07/11/19	Order 477782A	Invoice	41,395.20		565,838.21
210075	07/12/19	Order 477788A	Invoice	50,568.00		616,406.21
210076	07/12/19	Order 477789A	Invoice	20,114.50		636,520.71
210100	07/13/19	Order 477804A	Invoice	44,076.48		680,597.19
210101	07/13/19	Order 477805A	Invoice	23,874.76		704,471.95
210112	07/15/19	Order 477809A	Invoice	44,405.76		748,877.71
210141	07/16/19	Order 477815A	Invoice	37,004.80		785,882.51
210142	07/16/19	Order 477816A	Invoice	44,217.60		830,100.11
210143	07/16/19	Order 477817A	Invoice	44,217.60		874,317.71
210167	07/17/19	Order 477829A	Invoice	49,674.24		923,991.95
210168	07/17/19	Order 477830A	Invoice	49,674.24		973,666.19
210169	07/17/19	Order 477831A	Invoice	22,155.84		995,822.03
210201	07/18/19	Order 477848A	Invoice	44,217.60		1,040,039.63
210202	07/19/19	Order 477847/853A	Invoice	50,595.44		1,090,635.07
210203	07/19/19	Order 477852A	Invoice	49,674.24		1,140,309.31
210204	07/19/19	Order 477849A	Invoice	39,611.60		1,179,920.91
210224	07/22/19	Order 477859A	Invoice	41,395.20		1,221,316.11
210225	07/22/19	Order 477860A	Invoice	41,395.20		1,262,711.31



Correspondence To:

Schoep's Ice Cream Co., Inc.
P.O. BOX 3249
2070 Helena Street
Madison, WI 53704-3249
Phone: 608-245-4126



CUSTOMER STATEMENT

Statement Date: 01/29/20
Account Number: [REDACTED]
High Road Craft Ice Cream
Payment Terms NET 30 DAY

High Road Craft Ice Cream
1730 West Oak Commons Ct
Marietta, GA 30062

Amount Remitted

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Document	Date	Terms	Code	Debits	Credits	Balance
210226	07/22/19	Order 477862A	Invoice	40,346.60		1,303,057.91
210244	07/23/19	Order 477874-76	Invoice	9,658.88		1,312,716.79
210245	07/23/19	Order 477875A	Invoice	49,674.24		1,362,391.03
210265	07/24/19	Order 477886A	Invoice	44,076.48		1,406,467.51
210266	07/24/19	Order 477887A	Invoice	40,403.44		1,446,870.95
210267	07/24/19	Order 477888A	Invoice	46,219.74		1,493,090.69
210296	07/25/19	Order 477896A	Invoice	44,405.76		1,537,496.45
210297	07/25/19	Order 477897A	Invoice	22,120.56		1,559,617.01
210313	07/26/19	Order 447903A	Invoice	44,405.76		1,604,022.77
210314	07/26/19	Order 477904A	Invoice	41,630.40		1,645,653.17
210326	07/29/19	Order 477912A	Invoice	46,757.76		1,692,410.93
210327	07/29/19	Order 477913A	Invoice	46,757.76		1,739,168.69
210349	07/30/19	Order 477920A	Invoice	44,217.60		1,783,386.29
210350	07/30/19	Order 477921A	Invoice	44,217.60		1,827,603.89
210351	07/30/19	Order 477922A	Invoice	15,713.32		1,843,317.21
210497	08/08/19	Order 477990A	Invoice	46,757.76		1,890,074.97
210498	08/08/19	Order 477991A	Invoice	15,585.92		1,905,660.89
210526	08/12/19	Order 477998A	Invoice	46,757.76		1,952,418.65
210527	08/12/19	Order 477999A	Invoice	46,757.76		1,999,176.41
210549	08/13/19	Order 478010A	Invoice	7,792.96		2,006,969.37
210693	08/23/19	Order 478063A	Invoice	44,688.00		2,051,657.37
210702	08/23/19	Invoice 10774	Invoice	10,428.55		2,062,085.92
210712	08/26/19	Order 478064A	Invoice	46,757.76		2,108,843.68
210713	08/26/19	Order 478065A	Invoice	45,722.88		2,154,566.56
210737	08/27/19	Order 478074A	Invoice	41,395.20		2,195,961.76
210738	08/27/19	Order 478075A	Invoice	41,395.20		2,237,356.96
210739	08/27/19	Order 478076A	Invoice	45,593.52		2,282,950.48
210741	08/28/19	Order 478080A	Invoice	43,480.64		2,326,431.12
210742	08/28/19	Order 478081A	Invoice	31,877.44		2,358,308.56
210743	08/28/19	Order 478082A	Invoice	13,637.68		2,371,946.24
210758	08/29/19	Order 478096A	Invoice	44,405.76		2,416,352.00

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Phone: 608-245-4126



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210759	08/29/19	Order 478095A	Invoice	35,154.56		2,451,506.56
210771	08/30/19	Order 478105A	Invoice	13,876.80		2,465,383.36
210829	09/05/19	Order 478118B	Invoice	2,810.64		2,468,194.00
211071	09/25/19	Invoice 10781	Invoice	1,987.76		2,470,181.76
211075	09/25/19	Invoice 10782	Invoice	28,970.57		2,499,152.33
211448	10/17/19	Order 162553	Invoice	40,705.28		2,539,857.61
211449	10/17/19	Order 162554	Invoice	13,555.84		2,553,413.45
211450	10/18/19	Order 162555	Invoice	37,004.80		2,590,418.25
211453	10/18/19	Order 162557	Invoice	27,385.44		2,617,803.69
211464	10/18/19	Order 162556A	Invoice	33,304.32		2,651,108.01
211334	10/24/19	Invoice 10797	Invoice	146.57		2,651,254.58
ACH 11.19.19	11/19/19	High Road Craft Ice Cream	Payme		258.72	2,650,995.86
211622	11/21/19	Order 162821	Invoice	5,943.15		2,656,939.01

Statement Aging:		Statement Balance		*****	258.72	2,656,939.01
Days overdue:	Current	Up To 30 Days	31 - 60 Days	Over 60 Days		
Aged amounts:	0.00	0.00	5,943.15	2,650,995.86		